

RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

November 18, 2010

1:00 p.m.

Room 437, State House, Augusta

Convene

1. Welcome and Introductions
Senator Barry Hobbins, Chair
2. Subcommittee Reports
 - A. Legislative Subcommittee, Judy Meyer
 - B. Bulk Records Subcommittee, Bob Devlin
 - C. Public Records Exceptions Subcommittee, Shenna Bellows
3. Report
4. Other old business
 - FOA services, based at the Law School?
5. New business
 - Requiring all State computer upgrades to ensure transparency

Adjourn

Right to Know Advisory Committee
Question identified by Bulk Records Subcommittee
11/17/10

The following are the questions for further examination that were developed by the Bulk Records Subcommittee of the Right to Know Advisory Committee. The work of the Subcommittee was initially directed by the charge to the Right to Know Advisory Committee included in Public Law 2009, Chapter 567, Section 11. The ongoing litigation involving Registries of Deeds of several counties, MacImage of Maine, LLC and John Simpson necessitated a tabling of much of the discussion of the Subcommittee. Instead, the Subcommittee attempted to identify specific questions that need to be resolved before the Subcommittee and the Advisory Committee as a whole can recommend changes in laws, policies and practices with regard to bulk public records. The questions are grouped as the topics are mentioned in Chapter 567, Section 11.

Public Law 2009, chapter 567

Sec. 11. Requests for bulk data. The Right To Know Advisory Committee shall review and make recommendations concerning the issues involved with requests for public records in bulk, including:

1. Public access to databases

- Does the public have the right access the database itself or just the data?
- What does “database” include?: software, proprietary information to make database function?
- Are there security issues related to accessing databases?

2. Protection of personal information that is not designated as confidential but is contained in databases that include public records

- Is this a problem? Is all information in the government’s hands necessary for the public to be able to access in order to know what government is doing and evaluate?
- How should personal/private information be identified? What level of protection, if any, should be provided?
- Does the custodian have the authority to redact?
- Is there a difference between information in a “database” vs. information in a physical collection of physical records

3. Reasonable costs for copies when public records are requested in bulk

- Should cost of creating and maintaining database be factored into cost of copies?
- How to factor in MacImage decisions?
- Can Registry of Deeds cost factors formula be applied to all agencies? Note that many data custodians do not have a fee-setting mechanism analogous to County Commissioners

4. Whether access or costs should be based on the intended or subsequent use of the information requested in bulk

- FOA laws have never drawn a distinction among different intended purposes; Exceptions:

Right to Know Advisory Committee
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- ♦ Central Voter Registration System limits access to certain people for certain uses (tied to federal law)
- ♦ Federal Driver Privacy Protection Act limits what BMV can give out and to whom
- ♦ Access to otherwise confidential information is sometimes permitted for certain uses:

e.g., 22 MRSA §4008, confidential child protective records, optional disclosure:

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the researcher and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact;

- How determine “appropriate” use as basis for access or amount of fee?
- Other states base access and fees on:
 - nature of requestor
 - use/reason for request
 - limitation on subsequent use

5. The acceptable formats for responses to requests, including electronic and paper

- No requirement that create new document/record
- Requestor should receive in format requested if reasonable
- Translation from database to useable format - who bears cost?
- Require requestor to buy software from vendor to access data?
- Security of database?
- Does for-profit intent make a difference?

6. The appropriate role for InforME in responding to requests for public records in bulk

- InforME not involved in specific FOA requests
- Works with agencies to create service level agreements; negotiate fee with agency (InforME “self-funded”)
- Regular updates should go through InforME
- Require that when a state agency has a contract with InforME, the bulk record request must go through InforME (violation of contract if agency releases directly?)

(7. Any other issues the advisory committee considers appropriate.)

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Bulk Records

InforME Bulk Data Services Summary July 2010

IF&W – Bulk Special Request Data:

Data available to purchase includes moose permittee data, hunting and fishing license data, boat/ATV/snowmobile registration data, and guides/trappers licensee data. These requests tend to be one-time and specific requests from folks who wish to market their business to outdoorsmen (camp owners, guides, outfitters, etc.), as well as from political candidates during election years.

Fees: \$.03 - \$.05 per record

Fee set by: rulemaking

Annual requests: approx 25-30

Annual records sold: approx 27,000

BMV – Bulk & Special Request Data:

Data available to purchase includes vehicle title, registration, and driver license data. In order to obtain personal information in these records (name, address, date of birth, license number), the purchaser must be eligible under the Driver Privacy Protection Act and sign an affidavit regarding their eligibility. Customers for this data vary but it is mostly national data brokers who have standing orders for monthly updates. These records are typically re-sold by those companies to insurance companies for underwriting purposes. Other customers include credit agencies and large local employers.

Fees: Entire reg, title, or license database - \$.02 per record; sub-sets - \$.06 per record

Fee set by: rulemaking

Annual requests: approx 300

Annual records sold: approx 7,175,000

The BMV bulk data service was part of the initial InforME SLA negotiated with the Secretary of State in 1999. SOS was unable to provide a sufficient per-record portal fee on online driver records to support the desired level of baseline portal staff, so SOS offered the bulk data service as supplementary baseline revenue to make up the difference. BMV had previously sold the bulk data themselves, at a financial loss due to staff time. When the service was moved to the portal, BMV increased the per-record fees and negotiated a flat monthly payment from InforME. This provided BMV more revenue and eliminated their staff impact. This service remains a core portion of the portal's funding.

CEC – Bulk & Special Request Corporations and UCC Data:

Data available to purchase includes corporate records, active/inactive corporations records, trademark records, trademark images, corporate/UCC images, UCC records. Standard record updates are available weekly or monthly. There are a handful of customers, primarily large national data brokers who have standing orders for updates.

Bulk Records 2

Fees:

Bulk UCC and Corporate Data Full Data Monthly Data-sets

Batch Corporate & UCC Records	\$600.00
Batch Active/Inactive Corporate & UCC Records	\$1200.00
Batch Corporate & UCC Images	\$1500.00
Batch Service/Trade Mark Records	\$300.00
Batch Service/Trade Mark Images	\$300.00

Bulk UCC and Corporate Data Weekly Updates Data-sets

Corporate Data	\$300.00
Corporate Images	\$500.00
Service/Trade Mark Data	\$150.00
Service/Trade Mark Images	\$150.00
UCC Data	\$300.00
UCC Images	\$500.00

Special Request Corporate & UCC Records \$0.10 per record

Fee set by: rulemaking

Annual Requests: approx 100

Annual Records sold: n/a

State Police - Crash Reports:

Data available to purchase consists of state crash reports, including crash date, location, names, injury information, vehicle information, license status. There are just a few customers for this data, primarily large national entities that use this information for consumer protection and data broker services.

Fees: \$0.50 per record

Fee set by: statute specifies that agency may set fees for crash records; fees set in rulemaking

Annual Requests: approx 25

Annual Records sold: approx 70,000

Board of Medicine - Bulk Physician Licensee Data:

Online service allows users to specific data parameters to create a downloadable file. These are typically one-time and specific requests.

Fees: \$50 flat fee plus \$.05 per record

Fee set by: rulemaking

Annual requests: approx 50

Annual records sold: approx 150,000

2000-2009 - Just

Public Records Exceptions Subcommittee
Proposed language changes

Chart #11

substantive

Sec. 1. 22 MRSA §1065 is repealed.

Chart #65

Sec. 2. 24 MRSA §2329, sub-§8 is amended to read:

§2329. Equitable health care for alcoholism and drug dependency treatment

8. Confidentiality. ~~The confidentiality of all alcoholism~~ Alcoholism and drug treatment patient records ~~shall be protected~~ are confidential.

Chart #75

Sec. 3. 24-A MRSA §225, sub-§3 is amended to read:

§225. Examination report; contents; prima facie evidence in certain proceedings

3. All working papers, recorded information, documents and copies of any of these media produced by, obtained by or disclosed to the superintendent or any other person in the course of an examination made under this chapter ~~must be given~~ are confidential ~~treatment~~, are not subject to subpoena and may not be made public by the superintendent or any other person, except to the extent provided in sections 226 and 227. Access may be granted to the National Association of Insurance Commissioners. Any parties granted access must agree in writing prior to receiving the information to provide the information with the same confidential treatment as required by this section unless prior written consent of the insurer to which the information pertains has been obtained.

Chart #76

Sec. 4. 24-A MRSA §226, sub-§2 is amended to read:

§226. Examination reports; distribution, hearing; as evidence

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Public Records Exceptions Subcommittee
Proposed language changes

2. If requested by the person examined, within the period allowed under subsection 1, or if determined advisable by the superintendent without such request, the superintendent shall hold a hearing relative to the report and may not file the report in the bureau until after the hearing and the superintendent's order on the report; except that the superintendent may furnish a copy of the report to the Governor, Attorney General or Treasurer of State pending final decision and, if the copies are so furnished, they are ~~deemed confidential information~~ until the other requirements of this section with regard to examination reports have been satisfied. In lieu of convening a hearing, the superintendent may reopen the examination or, if supported by the information obtained, may adopt some or all of the modifications proposed by the person examined.

Chart #77

Sec. 5. 24-A MRSA §227 is amended to read:

§227. Examination report

The report of examination of those persons, partnerships, corporations or other business associations that are subject to examination by the superintendent as provided for in sections 221 and 222 shall, upon satisfaction of the requirements of section 226 and so long as no court of competent jurisdiction has stayed its publication, be filed in the bureau as a public record, except for that any information relating to an individual insured or individual applicant for insurance, ~~which is deemed confidential~~.

Chart #81

Sec. 6. 24-A MRSA §952-A, sub-§4, ¶H is amended to read:

§952-A. Actuarial opinion of reserves

H. Except as provided in paragraphs K, L and M, any memorandum in support of the opinion and any other documents, materials or other information provided by the insurer to the superintendent in connection with the memorandum are confidential, must be kept confidential by the superintendent ~~and are not public records within the meaning of the freedom of access laws~~ and are not subject to subpoena or discovery, nor admissible in evidence in any private civil action. The superintendent is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties.

Public Records Exceptions Subcommittee
Proposed language changes

Chart #90

substantive

Sec. 7. 24-A MRSA §2315 is repealed.

Chart #91

Sec. 8. 24-A MRSA §2323, sub-§4 is amended to read:

§2323. Recording and reporting of loss and expense experience

4. Each insurer shall report its loss or expense experience to the lawful rating organization, advisory organization or agency of which it is a member or subscriber, but shall not be required to report its loss or expense experience to any rating organization, advisory organization or agency of which it is not a member or subscriber. Any insurer not reporting such experience to a rating organization, advisory organization or other agency may be required to report such experience to the superintendent. Any report of such experience of any insurer filed with the superintendent ~~shall be deemed is~~ confidential and ~~shall~~ may not be revealed by the superintendent to any other insurer or other person, but the superintendent may make compilations including such experience.

Chart #91.5

substantive

Sec. 9. 24-A MRSA §2325-B, sub-§9 is amended to read:

§2325-B. Mandatory property and casualty insurance market assistance program

9. Modified policy form and rate filings. A modified policy form and modified rate developed by a member insurer must be filed with the superintendent. A modified rate to be used in connection with an existing policy form that consists solely of a permissible surcharge not in excess of the maximum allowable cap contained in rules adopted under subsection 8 may be used by a member insurer immediately upon filing that modified rate with the superintendent. For any other modified filings, a modified policy form and modified rate must be filed with the superintendent not less than 30 days in advance of the stated effective date. A modified rate filing subject to the 30-day advance filing requirement must include any supplementary rating information to be used in conjunction with a rate and, to the extent available, sufficient supporting information to support a rate. A modified rate may not be excessive, inadequate or unfairly

Public Records Exceptions Subcommittee
Proposed language changes

discriminatory with respect to risks written through the program. A modified policy form may only be disapproved for the grounds specified in section 2413. All modified policy form and rate filings are confidential until ~~effective or~~ approved in accordance with applicable law.

Chart #100

Sec. 10. 24-A MRSA §2842, sub-§8 is amended to read:

§2842. Equitable health care for alcoholism and drug dependency treatment

8. Confidentiality. ~~The confidentiality of all alcoholism~~ Alcoholism and drug treatment patient records ~~shall be protected~~ are confidential.

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Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Meetings in public: 4 options

Sec. 1. 1 MRSA §401 is amended to read:

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

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Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Confidential communications

Sec. 1. 1 MRSA §402, sub-§5 is enacted to read:

5. Public officials' communications. A record involving communications between a person and a public official is a public record except for information contained in the record that:

- A. Is excepted from the definition of public record in subsection 3;
- B. Is designated as confidential by statute; or
- C. Would be confidential if it were in the possession of another public agency or official.

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Right to Know Advisory Committee
REVISED PROPOSED DRAFT
Record/Minutes of Public Proceedings

(Initial changes from LD 1791 indicated in *italics*; MMA changes double underscored)

Sec. 1. 1 MRSA §403, as amended by PL 2009, c. 240, §1, is repealed and the following enacted in its place:

§403. Meetings to be open to public; record of meetings

1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public; *and any person must be permitted to attend a public proceeding and any public record or minutes of such proceedings that are required by law must be made within a reasonable period of time after the proceeding and must be open to public inspection.*

2. Record of public proceedings. Unless otherwise provided by law, *records of all public proceedings a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceedings proceeding and must be open to public inspection. At a minimum, a the record must include:*

- A. The date, time and place of the public proceeding;*
- B. The members of the body holding the public proceeding recorded as either present or absent; and*
- C. The general substance of all matters proposed, discussed or decided; and*
- D C. All motions and votes taken, by individual member, if there is a roll call.*

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

4. Maintenance of record. *Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.*

5. Validity of action. *The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.*

6. Advisory bodies exempt from record requirements. *Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.*

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Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Review Criteria

CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER 1-A
~~EXCEPTIONS TO PUBLIC RECORDS~~ EXCEPTIONS AND ACCESSIBILITY

§431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Public records exception. "Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

2. Review committee. "Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

3. Advisory committee. "Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

§432. Exceptions to public records; accessibility; review

1. Recommendations. During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

2. Process of evaluation. According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in

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section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

- A. Whether a record protected by the exception still needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the exception;
- C. Whether federal law requires a record to be confidential;
- D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- H. Whether the exception is as narrowly tailored as possible; and
- I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception.

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

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2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines.

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

A. Exceptions codified in the following Titles are scheduled for review in 2008:

- (1) Title 1;
- (2) Title 2;
- (3) Title 3;
- (4) Title 4;
- (5) Title 5;
- (6) Title 6;
- (7) Title 7;
- (8) Title 8;
- (9) Title 9-A; and
- (10) Title 9-B.

B. Exceptions codified in the following Titles are scheduled for review in 2010:

- (1) Title 10;
- (2) Title 11;
- (3) Title 12;
- (4) Title 13;
- (5) Title 13-B;
- (6) Title 13-C;
- (7) Title 14;
- (8) Title 15;
- (9) Title 16;
- (10) Title 17;
- (11) Title 17-A;
- (12) Title 18-A;
- (13) Title 18-B;

- (14) Title 19-A;
- (15) Title 20-A; and
- (16) Title 21-A.

C. Exceptions codified in the following Titles are scheduled for review in 2012:

- (1) Title 22;
- (2) Title 23;
- (3) Title 24;
- (4) Title 24-A; and
- (5) Title 25.

D. Exceptions codified in the following Titles are scheduled for review in 2014:

- (1) Title 26;
- (2) Title 27;
- (3) Title 28-A;
- (4) Title 29-A;
- (5) Title 30;
- (6) Title 30-A;
- (7) Title 31;
- (8) Title 32;
- (9) Title 33;
- (10) Title 34-A;
- (11) Title 34-B;
- (12) Title 35-A;
- (13) Title 36;
- (14) Title 37-B;
- (15) Title 38; and
- (16) Title 39-A.

3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as it determines appropriate and shall notify the review committee of such adjustments.

§434. Review of proposed exceptions to public records; accessibility of public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed, or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed

exception or proposed change that affects accessibility of a public record may not be enacted into law unless review and evaluation pursuant to ~~subsection~~ subsections 2 and 2-C have been completed.

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- C. Whether federal law requires a record covered by the proposed exception to be confidential;
- D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- H. Whether the proposed exception is as narrowly tailored as possible; and
- I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has

authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-C. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

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Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Social Security Numbers

Sec. 1. 1 MRSA §402, sub-§3, ¶N is amended to read:

N. Social security numbers ~~in the possession of the Department of Inland Fisheries and Wildlife; and~~

(Note that Registries of Deeds are not permitted to redact unless specifically requested by person whose personal information is included in documents filed there.)

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Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Using technology to conduct public proceedings

PART A

Sec. A-1. 1 MRSA § 403-A is enacted to read:

§403-A. Public proceedings through other means of communication

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

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G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

2. Voting. A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

APPENDIX DE

Seek input of agencies before making legislative changes to statutory procedures below.

PART B

Finance Authority of Maine

Sec. B-1. 10 MRSA §971 is amended to read:

§971. Actions of the members

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

1. Placement of call. A conference call to the members must be placed by ordinary commercial means at an appointed time.

2. Record of call. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

3. Notice of emergency meeting. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission *(any changes?)*

Sec. B-2. 21-A MRSA §1002 is amended to read:

§1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Emergency Medical Services Board

Sec. B-3. 32 MRSA §88, sub-§1, ¶D is amended to read:

§88. Emergency Medical Services' Board

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

1. Composition; rules; meetings. The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business ~~but is not exempt from Title 1, chapter 13, subchapter 1.~~ Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board

Sec. B-4. 39-A MRSA §151, sub-§5 is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

G:\Studies - 2010\Right to Know Advisory Committee\Legislation drafts\meetings by tech draft FINAL per RTKAC 09-23-10 mtg.doc (10/14/2010 11:22:00 AM)

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Public records and proceedings training

Sec. #. 1 MRSA §412 is amended to read:

§412. Public records and proceedings training for certain elected officials

1. Training required. ~~Beginning July 1, 2008, an~~ An elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

1-A. Training for certain appointed officials. Beginning July 1, 2011, an appointed county clerk or municipal clerk shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The appointed clerk shall complete the training not later than the 120th day after the date the appointed clerk takes the oath of office to assume the person's duties. For appointed clerks subject to this section serving in office on July 1, 2011, the training required by this section must be completed by November 1, 2011.

2. Training course; minimum requirements. The training course under subsection subsections 1 and 1-A must be designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

An elected official or appointed clerk meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or appointed clerk shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training

APPENDIX D

completed and the date of completion. The elected official or appointed clerk shall keep the record or file it with the public entity to which the official was elected.

4. Application. This section applies to the following ~~elected~~ officials:

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

D.

E. The following county government officials who are elected: ~~Commissioners, commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;~~

E-1. Appointed county clerks;

F. The following municipal government officials who are elected: ~~Municipal municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;~~

F-1. Appointed municipal clerks;

G. Elected ~~Officials~~ officials of school units and school boards; and

H. Elected ~~Officials~~ officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, an airport authority established pursuant to Title 6, chapter 10, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

Other issues previously discussed:

- Require training for legislators every year (or session?), even those trained in prior sessions
- Require training for all appointed officials who perform the same tasks as elected officials who are required to complete training
- Require training for all supervisors who oversee the work of officials who are required to have training
- Initial training enough or repeated training at some interval?

Reinsch, Margaret

From: Dwight Hines [dwight.hines@gmail.com]
Sent: Monday, November 08, 2010 9:29 AM
To: Reinsch, Margaret; Dwight Hines
Subject: Re: Questions on creating an Administrative Rule or Amendment to Maine FOAA to require all computer upgrades, etc., to assure transparency -- inexpensive, rapid access and electronic copies of electronic files

Dwight E. Hines, Ph.D.
 IndyMedia
 715 Green Woods Road
 Peru, Maine 04290

NEW BUSINESS

November 8, 2010

Dear Ms. Reinsch:

Thank you for your prompt reply.

Would it be possible to have my questions on the agenda at the next advisory board meeting? I think it's important that we move as quickly as possible on the questions because: 1) Systems are being ungraded, or leased, or purchased as time goes on and without the requirements that the improvements include increased speed of response to public records requests, with decreased costs, transparency is being completely negated; 2) Maine is going to remain in last place on the Forbes rankings, as well as other rankings, until a number of issues are resolved, with transparency being just one of several core issues, like integrity, that must be improved, and so on.

In fact, until these fundamental human rights issues on cost and speed of access to information are resolved, a moratorium on hardware, software, and personnel upgrades, along with purchases, leases, and salary increases should be considered for immediate implementation. After all, the FOAA is over 50 years old so it's time to make it functional with non-exempt electronic records.

The nice thing about these questions is that they are easily quantified by departments and agencies. What is cost of information now in electronic form? How long does it take to respond to a request? Then look at before and after rule or law changes to measure performance of workingness of new rules or laws.

The costs of implementing compliance with FOAA will depend on the quality of the personnel involved - some database managers will be able to achieve compliance by a simple memo, others will display severe sturm und drang and take months, if not more years to achieve compliance.

Dwight Hines

On Mon, Nov 8, 2010 at 7:50 AM, Reinsch, Margaret <Margaret.Reinsch@legislature.maine.gov> wrote:

Dr. Hines -

Thank you for your comments about the State's need to address public information in databases, including the ability to quickly provide information when requested.

11/17/2010

The Right to Know Advisory Committee has just begun examining bulk data issues, but has not looked at it from the perspective you describe. We appreciate your comments and will share them with the Right to Know Advisory Committee.

I will add you to our interested parties e-mail distribution list so you are kept up-to-date with the Advisory Committee's activities. I believe you may have already discovered the website, but just in case:
<http://www.maine.gov/legis/opla/righttoknow.htm>

Thank you for your interest and for your comments.

Peggy

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From: Dwight Hines [<mailto:dwight.hines@gmail.com>]
Sent: Friday, November 05, 2010 3:12 PM
To: Reinsch, Margaret; Dwight Hines
Subject: Questions on creating an Administrative Rule or Amendment to Maine FOAA to require all computer upgrades, etc., to assure transparency -- inexpensive, rapid access and electronic copies of electronic files

Dwight E. Hines, Ph.D.
IndyMedia
715 Green Woods Road
Peru, Maine 04290
207-562-4701

November 5, 2010

Ms. Peggy Reinsch
Legislative Staff
Right To Know Advisory Committee
State of Maine

Dear Ms. Reinsch:

Mr. Eric Stout, OIT, recommended that I contact you on the absence of transparency for electronic databases created and maintained by the State of Maine.

11/17/2010

From what I've experienced in dealing with Health & Human Services for the past two months in attempting to obtain an electronic copy of a small database (restaurant inspections), I believe Maine needs an Administrative Rule, or an Amendment to Maine FOAA, that will require all software and hardware purchases and leases, and computer upgrades, etc., be accompanied by a written assurance that transparency of the records was incorporated into the design and performance contracts so the public may obtain inexpensive, rapid access to, or copies of, electronic copies of electronic files maintained by the State of Maine.

In addition, a requirement that legal advisors, attorneys and paralegals who work for the state as full or part time employees or on a contract basis, take workshops to become computer literate in modern databases, be the databases be in SQL or some version of SQL. Because of the wonderful work of the ABA on establishing access to government records as a fundamental human right (InterAmerican Court Human Rights; European Court Human Rights, etc.), the attorneys might possibly provide a workshop to the information technology individuals on right to know and human rights, as well as right to know and economic development.

I will try and give you a call to see what you recommend that I do to see that such a Administrative Rule or Amendment be achieved as soon as possible.

Dwight Hines

Copy:
database.sunshine

